



STATE OF MONTANA

Department of Administration
Division of Banking and Financial Institutions
PO Box 200546, Helena, Montana 59620-0546
(406) 841-2920 Fax (406) 841-2930

APPLICATION FOR TITLE LOAN LICENSE

(Effective January 1, 2002)

Date: _____

Fees:

Each location conducting title loan business must be licensed. Licenses expire on December 31st. A fee of \$500.00 for each proposed location must be included with this application. Applications submitted between July 1-October 31 are required to pay half of the licensing fee in the amount of \$250.00 for each proposed location. The Division of Banking and Financial Institutions does not accept applications during November and December due to the processing of licensing renewals.

Amount Remitted _____

General Information and Instructions:

This form is provided to applicants proposing to operate a business under the terms of the Montana Title Loan Act (Title 31, Chapter 1, Part 8, Montana Code Annotated).

A **"Title Lender"** is defined as *"...a person engaged in the business of making title loans."*

A **"Person"** is an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

- ✓ An application for license must be completed in its entirety, with all applicable information and exhibits provided. If a particular item does not apply to the applicant's situation, enter "NA" or "None". Applications which are incomplete may be returned to the applicant. An application must be submitted for each proposed location and the address of the proposed application must be clearly identified in the application.

EXCEPTIONS: Applicants submitting multiple applications at one time are required to provide only one copy of information that is common to all the applications. Applicants that have other locations licensed by the Division may omit required information or exhibits if the information or exhibits on file with the Division have not changed materially and are less than two years old. Indicate that such information is on file with the Division.

- ✓ All information is to be typed or printed legibly in ink.
- ✓ Required exhibits as well as any additional information applicant considers appropriate are to be provided on letter size paper, except for official loan documents, which are to be provided in their original format.

- ✓ The application must be signed before a notary public.
- ✓ Application fees must be included with the application and are non-refundable.
- ✓ Each location conducting title loan business must be licensed.
- ✓ The Division must approve a change of location. The original license must be surrendered and a new license with the proper address will be issued.

The original copy of the license is to be displayed at the licensed location.

Licenses expire at the end of the calendar year in which they are issued.

Licenses are non-transferable and non-assignable. If more than 25% of ownership in a licensee is transferred to a new owner, the licensee must apply for a new license.

Statutory and operational benefits conferred by a license apply only to business activity after the date of licensure. Business conducted prior to the date of licensure is not ratified or validated by obtaining a license.

Montana law requires each licensee to maintain books, accounts and records that will allow the Department to determine if the licensee is complying with the provisions of the Title Loan Act. Additionally, all licensees are required to complete and submit the Officer's Questionnaire within ten (10) days after commencement of an examination. Each licensee is also required to file an annual report using a form provided by the Department. Minimum information required in the report is detailed in Section 31-1-815(2), attached to this application form.

I. APPLICANT INFORMATION

Name to appear on license (include any assumed business name)			
Physical address of Licensed office			
Telephone		Fax	
Mailing address of Licensee			
Mailing address of Licensee's home office (if applicable)			

Persons to contact regarding:

	This application	License renewals	Montana complaints
Name & Title			
Address			
City, State			
Phone			
Fax			
E-mail			

II. BUSINESS INFORMATION

1. Provide the name, and resume, employment history or business record of the person(s) to be in charge of the licensed location.
2. Describe any other business conducted in the same office as the licensee.
3. Has any court or regulatory authority ever cancelled, suspended or revoked the authority of the applicant, or any entity with which the applicant is or was associated? If so, please attach a sheet giving details.

Yes	No

III. BUSINESS STRUCTURE

Applicant is a:

☐

Corporation
Go to "A" below

Date of incorporation: _____

Publicly Traded? _____

☐

Limited Liability
Company
Go to "B" below

Date of formation: _____

☐

Partnership
Go to "C" below

Date of formation: _____ Limited partnership? _____

☐

Proprietorship
Go to "D" below

A. All corporate applicants must provide the following information

1. A list of the principal officers, their titles, and their business addresses.
2. A list of directors or trustees, their titles, if any, and their business addresses.
3. If not a publicly traded corporation, a list of the principal shareholders (those owning more than 20% of the outstanding shares) of the corporation, and their percentages of ownership.
4. A copy of the articles of incorporation showing the date of filing with the Secretary of State, and any amendments to those articles.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A copy of the minutes of the directors' or stockholders' meeting at which business operations in Montana were authorized.
7. A certificate of good standing from the corporation's home state.
8. If the applicant is not a Montana corporation:
 - a. The name and address of the corporation's Montana registered agent
 - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana.

B. All limited liability company applicants must provide the following information

1. A list of the manager(s) and other operating officers, their titles, and their business addresses.
2. If not managed by a manager, a list of the principal members, their titles, if any, and their business addresses.
3. A copy of the articles of organization showing the date of filing with the Secretary of State, and any amendments to those articles.
4. A copy of the operating agreement, if any, and any amendments to the agreement.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A certificate of good standing or similar document from the company's home state.
7. If the applicant is not a Montana limited liability company:
 - a. The name and address of the company's Montana registered agent.
 - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana

C. All partnership applicants must provide the following information

1. A list of the partners, their titles, if any, their ownership interest, and their business addresses. If the partnership is a limited partnership, indicate the general partner(s).
2. A copy of the partnership agreement showing the date of filing with the Secretary of State, and any amendments to the agreement.
3. If operating under a fictitious name, a certificate from the county clerk showing compliance with Montana laws pertaining to conducting business under a fictitious name.
4. If the applicant is a limited partnership, or a foreign partnership, the name and address of the applicant's Montana registered agent. Montana general partnerships that have designated an agent shall provide the agent's name and address.

D. All proprietorship applicants must provide the following information

1. A list of the owners of the applicant and their business addresses.

IV. GENERAL

All applicants must provide the following information, as separate exhibits:

1. An itemized statement of applicant's current financial condition. If a publicly traded corporation, the corporation's latest form 10-K filing may be provided. If a partnership, financial statements for the general partner(s) are required. If a proprietorship, financial statements for the proprietor(s) are required. Financial statements other than those provided by a public accountant or contained in a corporation's annual report or form 10-K must be originals and be signed by the preparer.
2. If any persons other than those named in this application and other than stockholders, partners or members of the applicant are to provide capital, please provide details, including names, amounts to be provided, and the nature of the arrangements.
3. List of other states in which licenses to conduct the same type of business are held.
4. A statement listing fictitious names under which applicant has conducted business.
5. A copy of all loan and disclosure documents proposed to be used by applicant, as required by Section 31-1-815, Montana Code Annotated.
6. A current schedule of loan fees and charges.
7. A copy of the required \$10,000 bond, including the name of the surety company, for each location proposed to be licensed.
8. A sworn statement (attached) executed by or on behalf of the applicant affirming that prohibited criminal or civil processes will not be used to collect payments.
9. Details of any current or anticipated civil litigation, as well as any judgments resulting from civil litigation, including the amount of any judgments and their current status.
10. A Personal Questionnaire (form is attached) completed by each principal in a proprietorship, each general partner in a partnership, the principal officers and all active directors in a corporation or each manager of a limited liability company, as well as the person to be in charge of the proposed licensed location.
11. Title 39, Chapter 71, Montana Code Annotated, generally requires every employer to provide workers' compensation insurance for its employees. Provide the name of applicant's workers' compensation insurance carrier, or the reasons why applicant is exempt from providing such coverage.
12. A copy of the required premises liability insurance in an amount of not less than \$100,000 for each occurrence for the benefit of consumers and employees who visit or work at the title lending office.

V. CHANGE OF OFFICERS, DIRECTORS OR MANAGERS

Applicant agrees, if a license is issued, to notify the Department of Administration of any change of officers, directors or managers associated with its Montana business, within 10 days of the effective date of such change. Notification will set forth the changes made, the names of the persons involved, a completed Personal Questionnaire (form is attached), and a statement of the qualifications of each person not formerly in an official position.

VI. SIGNATURES

For corporations or limited liability companies:

Entity Name: _____

(IMPRINT SEAL)

By: _____

Its: _____

And
By: _____

And
By: _____

Its: _____

Its: _____

For Partnerships and Proprietorships:

Subscribed and sworn to before me this _____ day of _____ by _____
_____ known to me to be the person whose signature appears on this
document. Witness my hand and official seal this _____ day of _____.

Notary Public

(SEAL)

For the State of _____

Residing at _____

My Commission expires: _____

SWORN STATEMENT

I, _____, the undersigned, whose relationship with the applicant is _____, do solemnly swear that the applicant will not in the future, directly or indirectly, use criminal process to collect the payment of title loans or any civil process to collect the payment of title loans not generally available to creditors to collect loans in default.

Dated this _____ day of _____, _____.

Signature _____

Subscribed and sworn to before me this _____ day of _____ by _____
_____ known to me to be the person whose signature appears on this
document. Witness my hand and official seal this _____ day of _____.

(SEAL)

_____ Notary Public

For the State of _____

Residing at _____

My Commission expires: _____

Licensee name: _____ License #: _____

PERSONAL QUESTIONNAIRE

To be completed by each employee of the licensed location.

Name: _____

Title or Position: _____

	Yes	No
Have you violated the laws of any other state relating to interest or charges on any type of credit transaction?		
Have you ever entered a plea of guilty or nolo contendere to, or been convicted of, a felony or a misdemeanor other than a misdemeanor traffic violation?		
Have you ever been confined in a city, county, state or federal penal institution for any reason other than to serve a sentence for a misdemeanor traffic violation?		
Have you ever been held liable in any civil or criminal fraud action or has ever been found, in a proceeding before any federal, state, or local court or agency, to have committed fraud?		
Is there pending, at any governmental level, any proceeding charging you with having committed a felony or misdemeanor other than a misdemeanor traffic violation?		
Is there pending, at any governmental level, any proceeding charging you with actual or constructive fraud?		
Have you or any entity you have been associated with ever been a party to or had or claimed any interest in a civil proceeding?		
Have you, or any business with which you are or were associated, ever been refused a license to operate the type of business proposed or had a license to operate such a business revoked or suspended in any other state?		
Have you ever changed or been known by any name other than that provided in the application?		

Any affirmative answer to any of the above questions shall be explained in detail on separate pages.

I certify that the above answers are true and correct to the best of my knowledge and belief. I understand that inaccuracies or omissions may cause denial of this application for license.

SIGNATURE TITLE DATE

Subscribed and sworn to before me this _____ day of _____ by _____

_____ known to me to be the person whose signature appears on this

document. Witness my hand and official seal this _____ day of _____ .

_____ Notary Public

(SEAL)

For the State of _____

Residing at _____

My Commission expires: _____

Montana Title Loan Act

31-1-801. Short title. This part may be cited as the "Montana Title Loan Act".

History: En. Sec. 1, Ch. 455, L. 2001.

31-1-802. Purpose -- rules -- scope -- fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.

History: En. Sec. 2, Ch. 455, L. 2001; amd. Sec. 1, Ch. 178, L. 2003; amd. Sec. 9, Ch. 163, L. 2005.

31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of administration provided for in [2-15-1001](#).

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.

(9) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

(10) "Title loan office" means the location or premises where a title lender regularly conducts business.

(11) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

History: En. Sec. 3, Ch. 455, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001; amd. Sec. 2, Ch. 178, L. 2003.

31-1-804. Licensure of title lenders . (1) It is unlawful for any person to act as a title lender unless the person has first been licensed by the department.

(2) (a) All title loan agreements entered into by a person who acts in violation of the license requirements of this part and all title pledges accepted by the person are void.

(b) Any borrower who enters into a title loan agreement with a person who acts in violation of the provisions of this part may not be bound by the terms of the title loan agreement, and the borrower's only liability is for the return of the principal sum borrowed plus interest at the rate set by statute for interest on judgments.

History: En. Sec. 4, Ch. 455, L. 2001.

31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

- (ii) the date of formation if a business entity;
- (iii) the physical address of each title loan office to be operated;
- (iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and
- (v) any other pertinent information that the department may require.

(3) The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.

(4) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for each title loan office that the applicant intends to operate or operates in this state.

(5) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

(6) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

(7) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.

(8) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified.

History: En. Sec. 5, Ch. 455, L. 2001; amd. Sec. 1, Ch. 120, L. 2005.

31-1-806 through 31-1-809 reserved.

31-1-810. Examinations -- fees. (1) The department may conduct an examination of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under [31-1-815](#) or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding of just cause to revoke or suspend a license, constitute grounds for license renewal.

History: En. Sec. 6, Ch. 455, L. 2001.

31-1-811. License revocation or suspension -- penalty. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

History: En. Sec. 7, Ch. 455, L. 2001; amd. Sec. 3, Ch. 178, L. 2003.

31-1-812. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part. The department may hold hearings, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement

agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or revoke or suspend a license granted under this part.

History: En. Sec. 8, Ch. 455, L. 2001.

31-1-813 through 31-1-814 reserved.

31-1-815. Information and annual reports. (1) Each licensee shall keep books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and shall maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a title loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each title loan with documentation maintained in the borrower's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

- (a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;
- (b) the income, expense, gain, loss, and balance sheets;
- (c) the total number of title loans made in the year ending as of December 31 of the previous year;
- (d) the total number of title loans outstanding as of December 31 of the previous year; and
- (e) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any title loans or used any civil process to collect the payment of title loans not available to title lenders under this part.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the title lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where title loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure pamphlets described in [31-1-819](#) with the department prior to the date of commencement of business at each location, at the time that any changes are made to the pamphlets, and annually upon renewal of the license. These pamphlets must be available to interested parties and to the general public through the department.

History: En. Sec. 9, Ch. 455, L. 2001.

31-1-816. Title loan requirements -- liability of borrower -- right of rescission -- arbitration. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

- (a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;
- (b) the borrower consents to the title lender keeping possession of the certificate of title;
- (c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;
- (ii) the borrower may rescind the transaction if, by 5 p.m. of the title lender's first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.
- (d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

- (A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in [31-1-820](#); and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with [61-3-103](#).

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a).

History: En. Sec. 10, Ch. 455, L. 2001; amd. Sec. 39, Ch. 477, L. 2003; amd. Sec. 3, Ch. 210, L. 2005.

31-1-817. Interest rates -- fees charged. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by this part may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and

(c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in [27-1-717](#), if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under [27-1-717](#)(3) based upon the presentment of an insufficient funds check.

History: En. Sec. 11, Ch. 455, L. 2001; amd. Sec. 4, Ch. 178, L. 2003.

31-1-818. Title loan agreements -- required disclosures. Each title loan agreement must disclose the following:

(1) all disclosures required to be made under the federal Truth in Lending Act;

(2) that the transaction is a loan secured by the pledge of titled personal property;

(3) the identity of the parties to the title loan agreement, including the name, business address, telephone number, and certificate number of the title lender and the name, resident address, and identification of the borrower;

(4) the monthly interest rate to be charged;

(5) the allowable fees and expenses to be charged to the borrower upon redemption of the certificate of title;

(6) the date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant to [31-1-820](#) expires;

(7) the location where the titled personal property is to be delivered if the certificate of title is not redeemed and the hours that the location is open for receiving deliveries;

(8) that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower;

(9) that any attempt by a borrower to obtain a replacement certificate of title on a motor vehicle during the

active term of a loan under this part may be a violation of [61-3-204](#) and may be subject to the penalty provisions of [61-3-601](#); and

(10) any additional disclosures considered necessary by the department.

History: En. Sec. 12, Ch. 455, L. 2001.

31-1-819. Required disclosure pamphlet. Before entering into a title loan agreement, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(1) explains, in simple language, all of the consumer's rights and responsibilities in a title loan transaction;

(2) includes a telephone number to the department's office that handles concerns or complaints by consumers;

(3) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information; and

(4) in a manner that is more conspicuous than the other information provided in the pamphlet and that is in at least 14-point bold typeface, furnishes a statement that "you cannot be prosecuted in criminal court for collection of this loan".

History: En. Sec. 13, Ch. 455, L. 2001.

31-1-820. Redemption of certificate of title -- failure to take possession. (1) (a) Except as otherwise provided in this part, the borrower is entitled to redeem the certificate of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement.

(b) Upon expiration or default of a title loan agreement and of the renewal or renewals of the title loan agreement, if any, the title lender shall give written notification to the borrower of the borrower's right to redeem the certificate of title and shall retain possession of the certificate of title for at least 20 days after providing the notification.

(c) If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding period, the borrower shall forfeit all right, title, and interest in and to the titled personal property to the title lender, who acquires an absolute right of title to the titled personal property. The title lender may sell or dispose of the pledged property.

(2) The title lender has, upon default by the borrower of any obligation pursuant to the title loan agreement, the right to take possession of the titled personal property.

(3) In taking possession, the title lender or the title lender's agent may proceed without judicial process if this can be done without breach of the peace or, if necessary, may proceed by judicial process.

(4) If the title lender takes possession of the titled personal property, either personally or through its agent, at any time during the 20-day holding period provided in subsection (1), the title lender shall retain possession, either personally or through its agent, of the titled personal property until the expiration of the 20-day holding period.

(5) If during the 20-day holding period the borrower redeems the certificate of title by paying all outstanding principal, interest, and other fees stated in the title loan agreement and, if applicable, repossession fees and storage fees, the borrower must be given possession of the certificate of title and the titled personal property without further charge.

History: En. Sec. 14, Ch. 455, L. 2001.

31-1-821. Records of title loan agreements. (1) Each title lender shall keep a consecutively numbered record of each title loan agreement executed. In addition to a copy of the title loan agreement, the record must include the following:

(a) a clear and accurate description of the titled personal property, including its vehicle identification or serial number, license plate number, year, make, model, type, and color, if applicable;

(b) the date of the title loan agreement;

(c) the amount of the loan made pursuant to the title loan agreement;

(d) the date of maturity of the loan; and

(e) the name, social security number, resident address, and type and an identification number of a photo identification of the borrower and whether the borrower is over 18 years of age.

(2) The title lender shall make a good and usable photocopy of the photo identification of the borrower or shall take an instant photograph of the borrower, which photocopy or photograph must be attached to the title lender's copy of the title loan agreement.

(3) The borrower and the title lender or the title lender's employee or agent shall sign the title loan agreement, and the borrower must be provided with a copy at the time of signing.

(4) (a) The title lender shall keep the numbered record and a copy of a title loan agreement for a period of not less than 2 years from the date of the closing of the last transaction reflected in the record. The date of the

last transaction, as used in this subsection, means, in the case in which a borrower redeemed the pledged certificate of title, the date of the redemption and, in the case in which a borrower does not redeem the pledged certificate of title, the date on which the title lender sells the titled personal property.

(b) A title lender who ceases engaging in the business of making title loans shall keep all records in the title lender's possession for a period of not less than 2 years from the date on which the title lender ceased engaging in the business.

(5) The records required to be maintained by this section must be made available for inspection by any employee of the department upon request during ordinary business hours without warrant or court order.

History: En. Sec. 15, Ch. 455, L. 2001.

31-1-822. Safekeeping of certificates of title -- liability insurance -- liability. (1) A person engaged in the business of title lending shall provide a safe place for the keeping of the pledged certificates of title and for the keeping of pledged property delivered to the title lender pursuant to the terms of any title loan agreement.

(2) A person engaged in the business of title lending shall maintain premises liability insurance in an amount of not less than \$100,000 for each occurrence for the benefit of consumers and employees who visit or work at the title lending office.

(3) A person engaged in the business of title lending is immune from liability for any loss or injury occasioned or caused by the use of pledged property unless the pledged property is actually in the possession of the title lender.

(4) A person engaged in the business of title lending is strictly liable to the borrower for any loss to pledged property in the possession of the title lender but only if the borrower makes a redemption of the pledged property prior to the expiration of the 20-day holding period provided in [31-1-820](#).

History: En. Sec. 16, Ch. 455, L. 2001.

31-1-823 through 31-1-824 reserved.

31-1-825. Prohibited acts. (1) A title lender may not:

- (a) accept a pledge from a person under 18 years of age;
 - (b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;
 - (c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;
 - (d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;
 - (e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;
 - (f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;
 - (g) hold a title for more than 30 calendar days without perfecting the title lender's security interest;
 - (h) threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not available to title lenders under this part;
 - (i) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;
 - (j) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;
 - (k) knowingly violate any provision of or rule promulgated pursuant to this part; or
 - (l) include any of the following provisions in the title loan agreement:
 - (i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;
 - (ii) a confession of judgment clause;
 - (iii) any assignment of or order for payment of wages or other compensation for services;
 - (iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract;
- or
- (v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void.

History: En. Sec. 17, Ch. 455, L. 2001; amd. Sec. 5, Ch. 178, L. 2003.

31-1-826. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any intentional violation of this part constitutes an unfair or deceptive trade practice.

(3) A person found to have intentionally violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

History: En. Sec. 18, Ch. 455, L. 2001; amd. Sec. 6, Ch. 178, L. 2003.

31-1-827. Criminal penalties. A person, including a member, officer, or director of a title lender, who knowingly violates this part is guilty of a misdemeanor and, on conviction, is subject to a fine in an amount not exceeding \$1,000 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 19, Ch. 455, L. 2001.